

State of California  
State Water Resources Control Board  
**DIVISION OF WATER RIGHTS**  
**P. O. Box 2000, Sacramento, CA 95812-2000**  
Info: (916)341-5300, FAX (916)341-5400, Web: <http://www.waterboards.ca.gov/waterrights>

**PROTEST – PETITION**

This form may also be used for objections

**PETITION FOR TIME EXTENSION, CHANGE, TEMPORARY URGENT CHANGE OR TRANSFER ON**

**APPLICATION \_\_\_\_\_ PERMIT \_\_\_\_\_ LICENSE (see Attachment 1)**

**of the California Department of Water Resources (“DWR”) and the United States Department of the Interior, Bureau of Reclamation (“Reclamation”)**

I (We) have carefully read the NOTICE OF PETITION, REQUESTING CHANGES IN WATER RIGHTS OF THE DEPARTMENT OF WATER RESOURCES AND U.S. BUREAU OF RECLAMATION FOR THE CALIFORINA WATERFIX PROJECT, dated October 30, 2015.

Address, email address and phone number of protestant or authorized agent:

**Protestant:** City of Stockton  
Mr. Mel Lytle, Director, Municipal Utilities  
2500 Navy Drive  
Stockton, CA 95206  
[mel.lytle@stocktonca.gov](mailto:mel.lytle@stocktonca.gov)  
(209) 937-8729

**Authorized Agent:** John Luebberke, City Attorney  
Tara Mazzanti, Deputy City Attorney  
City of Stockton  
425 El Dorado Street, 2nd Floor  
Stockton, CA 95202  
[John.luebberke@stocktonca.gov](mailto:John.luebberke@stocktonca.gov)  
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(209) 937-8333

Attach supplemental sheets. To simplify this form, all references herein are to protests and protestants although this form may be used to file comments on temporary urgent changes and transfers.

**Protest based on ENVIRONMENTAL OR PUBLIC INTEREST CONSIDERATIONS (Prior right protests should be completed in the section below):**

- the proposed action would not be within the State Water Resources Control Board’s jurisdiction
- not best serve the public interest

- be contrary to law
- have an adverse environmental impact



State facts which support the foregoing allegations: **See Attachment 2**

Under what conditions may this protest be disregarded and dismissed? (Conditions should be of a nature that the petitioner can address and may include mitigation measures.) **See Attachment 3**

**Protest based on INJURY TO PRIOR RIGHTS:**

To the best of my (our) information and belief the proposed change or transfer would result in injury as follows: **See Attachment 4**

Protestant claims a right to the use of water from the source from which petitioner is diverting, or proposes to divert, which right is based on (identify type of right protestant claims, such as permit, license, pre-1914 appropriative right or riparian right): **See Attachment 5**

List permit or license or statement of diversion and use numbers, which cover your use of water (if adjudicated right, list decree): **See Attachment 5**

Where is your diversion point located? **See Attachment 5**

If new point of diversion is being requested, is your point of diversion downstream from petitioner's proposed point of diversion? **See Attachment 5**

The extent of present and past use of water by protestant or his predecessors in interest is as follows: **See Attachment 5**

Under what conditions may this protest be disregarded and dismissed? **See Attachment 3**

**All protests must be signed by the protestant or authorized representative:**

Signed: \_\_\_\_\_ Date: January 5, 2016

**All protests must be served on the petitioner.** Provide the date served and method of service used: **See Attachment 6**

**ATTACHMENT 1 (Petitioners' Permits)**

DWR: Permits 16478, 16479, 16481, and 16482 (Applications 5630, 14443, 14445A, 17512)

Reclamation: Permits 11315, 11316, 12721, 12722, 12723, 11967, 11968, 11969, 11971, 11973, and 12364 (Applications 13370, 13371, 5628, 15374, 15375, 16767, 17374, 17376, 5626, 9363, and 9364)

**ATTACHMENT 2 (Facts Supporting Protest Based on Environmental, Public Interest Considerations, Applicable Law)**

I. *Identification of Protestant*

The City of Stockton is a municipal corporation in San Joaquin County, California, and located entirely within the Sacramento-San Joaquin River Delta (Delta), and has a population of approximately 300,000. The well-being of the City, its residents, and economy is inextricably linked to the Delta, the quantity and quality of Delta water supplies, and the Delta ecosystem.

The City's Municipal Utilities Department provides potable drinking water to more than 48,000 residential, commercial, and industrial customers with a service population of 182,000. This accounts for approximately 55 percent of the Municipal and Industrial (M&I) potable water demand of the Stockton Metropolitan Area. One of the sources of water for treatment and delivery to City customers is the Delta Water Supply Project (DWSP) Water Treatment Plant. The City diverts from the Delta at the southwest tip of Empire Tract consistent with State Water Resources Control Board permit No. 21176, issued on Application 30531A. Permit No. 21176 provides for diversion of up to 33,600 acre-feet per year at a rate up to 317 cubic feet per second (cfs) for municipal and industrial purposes. Other current significant sources of water for the City include contracted surface water and groundwater supplied by the City as well as the California Water Service Company and San Joaquin County. The City also has other current and future interests in the right of use of water, including uses under Application 30531B (for 92,300 acre-feet per year with the point of diversion at the DWSP).

In addition, the City owns and operates a wastewater collection system and the Stockton Regional Wastewater Control Facility (RWCF), which discharges treated effluent to the San Joaquin River after extensive treatment including tertiary filtration, and nitrification for ammonia removal. The City also operates and maintains a municipal stormwater collection and disposal system, which, like the RWCF, is regulated under an NPDES permit issued and administered by the Central Valley Regional Water Quality Control Board.

Finally, in general, the City's economy, and the health and well-being of City residents, are dependent on the health of the Delta, including water quality and fish and wildlife resources and Delta agriculture.

II. *Basis for Protest*

The proposed water right changes, intended to enable the California WaterFix Project, would injure and/or place undue burdens on the City, adversely affect environmental resources, and are contrary to the public interest, and approval would not be appropriate. Preliminarily, the City notes that the City has provided comments and evidence to the petitioners/project proponents, including but not limited to: the October 29, 2015 letter addressed to BDCP/WaterFix Comments, "City of Stockton Comments of the Bay Delta Conservation Plan / California WaterFix Recirculated Draft Environmental Impact Report / Supplement Draft Environmental Impact Statement (RDEIR/SDEIS)" (October 2015 Comments); the July 29,

2014 letter addressed to National Marine Fisheries Service, Attn. Ryan Wulff, Re: “City of Stockton’s Comments on Draft BDCP and Associated Draft EIR/EIS” (July 2014 Comments); and the letter dated May 30, 2008 addressed to Ms. Delores Brown, Re: “City of Stockton Comments on The Notice of Preparation of an EIR/S for the Bay Delta Conservation Plan” (May 2008 Comments). The October 2015 Comments, July 2014 Comments, and May 2008 Comments are referred to collectively as the “City Comments” and the City Comments are incorporated into this Protest by this reference. The Petition does not acknowledge or cure any of the deficiencies identified by the City Comments, or many other parties, or address issues that are necessary for lawfully adequate consideration of the Petition.

In general, the proponents’ project descriptions and analyses to date are insufficient to fully evaluate the extent of injury and adverse effects that would result from the proposed action, and it would be impossible for the State Water Resources Control Board (State Water Board) to make the necessary findings to approve the Petition. In addition, the available information indicates injury to other lawful users such as the City, as well as adverse environmental and socioeconomic consequences, and inconsistency with applicable law; approval would not be appropriate or in the public interest.

The proposed action would, or threatens to, degrade water quality by various means. The project proponents have declined to analyze, disclose, or acknowledge these impacts. Water quality at the DWSP intake will be affected by changes in San Joaquin River flows and Sacramento River flows resulting from the added points or diversion, associated operational changes or both, and the adverse changes in water quality would result in substantial injury and burdens. Beyond this general point, even the Petitioners’ analyses have demonstrated negative changes in Delta water quality for certain parameters, including electrical conductivity, chloride, and bromide, all of which are of concern for municipal and industrial water supplies. The project proponents have also identified that the proposed action will result in increased residence time for water in the Delta. In turn, this condition will increase the undesirable production of cyanobacteria (e.g., *Microcystis*), which has both direct and indirect adverse effect on municipal water treatment and supply.

In this regard, the injury and other adverse effects from reduced water quality at the DWSP also implicate groundwater and groundwater management. Groundwater remains a part of the City’s overall water portfolio. However, a major purpose of the DWSP was to protect regional groundwater from increasing overdraft. (Groundwater is also high in total dissolved solids (TDS).) Groundwater levels improved over the past few decades in the Stockton vicinity, but if groundwater must be relied upon more extensively as a result of the proposed action, groundwater levels will be expected to decline, and TDS levels in potable supplies and wastewater discharges will increase. Indirect groundwater-related effects of this nature would be inconsistent with the Sustainable Groundwater Management Act or its goals.

As described above, the City also has pending its Application 30531B, which is to provide water for future use by the City. Application 30531B is based in part on Water Code sections 1215-1222 and 11460-11465, which require protection of water availability and use for areas or watersheds of origin and areas immediately adjacent thereto. Among other things, the proposed action may not, directly or indirectly, deprive Stockton of all of the water

reasonably required by the City under Application 30531B or otherwise. The evidence does not establish that such injury would not occur.

The proposed action also cannot be approved because it is inconsistent with the Sacramento-San Joaquin Delta Reform Act of 2009, Water Code sections 85000-85350 (Reform Act), and the Delta Plan. The Reform Act's purposes include "to provide for a more reliable water supply for the state [and] to protect and enhance the quality of water from the Delta . . . [and] to develop a legally enforceable Delta Plan." (Wat. Code, § 850001(c).) In turn, the Delta Plan requires that "covered actions" demonstrate consistency with all Delta Plan policies as well as the state's coequal goals that include "providing a more reliable water supply for California . . . ." (Wat. Code, § 85054.) The proposed action does not meet the policies of the Reform Act or the coequal goals as to in-Delta interests such as the City, and cannot be approved. In addition, based on the available evidence, the proposed action is not consistent with the Delta Protection Act, Water Code sections 12200-12205, which provides that "the maintenance of an adequate water supply in the Delta sufficient to maintain and expand agriculture, industry, urban and recreational development in the Delta . . ." is in the public interest, and that a function to be provided by the State Water Project is the "provision of salinity control and an adequate water supply for the users of water in the Sacramento-San Joaquin Delta." (Wat. Code, §§ 12201, 12202.) The proposed action and the Petitioners' associated activities do not account for these policies and mandates.

The effects of the proposed action and Petition on the interests of the City, and on the public interest, also extend to regulatory burdens that can be affected by changes in the volume, pattern of flow, or quality of the San Joaquin River. Regulation under NPDES permits issued to the City is affected by the quantity and quality of flow in the San Joaquin River and other areas downstream of the City's discharges. Further, the project's adverse impacts on the environment and aquatic resources may lead to increased regulatory requirements for other regulated parties such as the City whose actions are treated as controllable. Petitioners have not completed sufficient technical analysis to fully evaluate these negative effects on the City, but have suggested that negative impacts of their actions can be offset through the imposition of increased regulatory requirements on regulated parties, including in-Delta parties such as the City who are regulated under an NPDES permit. These types of impacts and consequence are not appropriate nor in the public interest.

The City reserves the right to rely on evidence and submittals of other parties in support of its protest of the Petition.

**ATTACHMENT 3 (Conditions Under Which This Protest May Be Disregarded and Dismissed)**

The resolutions of the City's protests will, directly or indirectly, require objective evaluation and disclosure of the impacts of the proposed action on the City. The proposed action and its implementation must avoid or fully mitigate all direct or indirect effects to the City that may result from changes in streamflow, water availability, water quality, or the environment associated with the proposed action. The City is willing to engage with the Petitioners on these issues.

**ATTACHMENT 4 (Facts Supporting Protest Based on Injury to Prior Rights and Lawful Use of Water)**

The “Identification of Protestant” section of Attachment 2 of this Protest generally identifies interests of the City, and the City Comments identified under “Basis for Protest” in Attachment 2 are relevant to the protest grounds below. The facts supporting protest grounds in Attachment 2 overlap with those related to injury to the City as a lawful user of water.

The proposed action would, or threatens to, degrade water quality by various means. The project proponents have declined to analyze, disclose, or acknowledge these impacts. Water quality at the DWSP intake will be affected by changes in San Joaquin River flows and Sacramento River flows resulting from the added points or diversion, associated operational changes, or both, and the adverse changes in water quality would result in substantial injury to the City as a lawful user of water. Beyond this general point, even the Petitioners’ analyses have demonstrated negative changes in Delta water quality for certain parameters, including electrical conductivity, chloride, and bromide, all of which are of concern for municipal and industrial water supplies. The project proponents have also identified that the proposed action will result in increased residence time for water in the Delta. In turn, this condition will increase the undesirable production of cyanobacteria (e.g., Microcystis), which has both direct and indirect adverse effect on municipal water treatment and supply.

In this regard, the injury and other adverse effects from reduced water quality at the DWSP also implicate groundwater and groundwater management. Groundwater remains a part of the City’s overall water portfolio. However, a major purpose of the DWSP was to protect regional groundwater from increasing overdraft. (Groundwater is also high in total dissolved solids (TDS).) Groundwater levels improved over the past few decades in the Stockton vicinity, but if groundwater must be relied upon more extensively as a result of the proposed action, groundwater levels will be expected to decline, and TDS levels in potable supplies and wastewater discharges will increase. Indirect groundwater-related effects of this nature would be inconsistent with the Sustainable Groundwater Management Act or its goals.

As described in Attachment 2, the City also has pending its Application 30531B, which is to provide water for future use by the City. Application 30531B is based in part on Water Code sections 1215-1222 and 11460-11465, which require protection of water availability and use for areas or watersheds of origin and areas immediately adjacent thereto. Among other things, the proposed action may not, directly or indirectly, deprive Stockton of all of the water reasonably required by the City under Application 30531B or otherwise. The evidence does not establish that such injury would not occur.

To the extent the proposed action affects aquatic resources or the environment, it can additionally cause injury to the City due to regulatory restrictions that limit access to water. For example, at present, in order to protect delta smelt, the City may not divert at the DWSP during a two-month period. Changes or increases in restrictions of this sort injure the City and its interests.

The proposed action also cannot be approved because it is inconsistent with the Sacramento-San Joaquin Delta Reform Act of 2009 (Water Code sections 85000-85350 (Reform Act) and the Delta Plan. The Reform Act's purposes include "to provide a more reliable water supply for the state [and] to protect and enhance the quality of water from the Delta . . . [and] to develop a legally enforceable Delta Plan." (Wat. Code, § 850001(c).) In turn, the Delta Plan requires that "covered actions" demonstrate consistency with all Delta Plan policies as well as the state's coequal goals that include "providing a more reliable water supply for California . . . ." (Wat. Code, § 85054.) The proposed action does not meet the policies of the Reform Act nor the coequal goals as to in-Delta interests such as the City, and cannot be approved. In addition, based on the available evidence, the proposed action is not consistent with the Delta Protection Act, Water Code sections 12200-12205, which provides that "the maintenance of an adequate water supply in the Delta sufficient to maintain and expand agriculture, industry, urban and recreational development in the Delta . . ." is in the public interest, and that a function to be provided by the State Water Project is the "provision of salinity control and an adequate water supply for the users of water in the Sacramento-San Joaquin Delta." (Wat. Code, §§ 12201, 12202.) The proposed action and the Petitioners' associated activities do not account for these policies and mandates. Rather, they would adversely affect, and place undue burdens on, Stockton.

## **ATTACHMENT 5 (Nature of Protestant's Rights to Water)**

### *I. The City of Stockton Claims a Right of Use of Water as Follows:*

The City's Delta Water Supply Project (DWSP) diverts from the Delta at the southwest tip of Empire Tract consistent with permit No. 21176 issued on Application 30531A. Permit No. 21176 provides for diversion of up to 33,600 acre-feet per year at a rate up to 317 cfs for municipal and industrial purposes. Other current significant sources of water for the City include contracted surface water and groundwater supplied by the City as well as the California Water Service Company and San Joaquin County. The City also has other current and future interests in the right of use of water, including uses under Application 30531B (for 92,300 acre-feet per year with the point of diversion at the DWSP). The City also has interests relevant to this protest characterized in section IV below of this Attachment 5.

### *II. Permit, License, or Statement of Diversion and Use*

The City holds permit No. 21176 issued on Application 30531A, and is the applicant on Application 30531B. The City also has interests relevant to this protest characterized in section IV below of this Attachment 5.

### *III. Protestant's Diversion*

The diversion under permit No. 21176 is:

By California Coordinate System of 1927 in Zone 3: N563,400-E,713,150.

By subdivision of public land survey or projection: NE1/4 of NE1/4, Sec. 11, Twp. 2N, R4E, MDM.

### *IV. Extent of Past Water Use*

Water has been diverted and beneficially used under permit No. 21176 in each month since May 2012. To date, the maximum monthly diversion has been approximately 1684 acre-feet, and the highest diversion in a calendar year has been approximately 8,832 acre-feet. The City's progress reports as permittee are available at <https://ciwqs.waterboards.ca.gov/ciwqs/ewrims/listReportsForWaterRight.do?waterRightId=14035>.

In addition to diversion at the DWSP under permit No. 21176, the City contracts with the Woodbridge Irrigation District (WID) for a diversion of up to 6,500 acre-feet per year. WID diverts from the Mokelumne River under pre-1914 water rights (Statement SO15557). WID water is then conveyed to the head of the DWSP Water Treatment Plant for treatment and delivery. The following table shows, by month: total amounts of surface water treated at the DWSP based on diversion under permit No. 21176 and the WID contract; and amounts diverted under permit No. 21176.

		Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2012	Diversion under permit 21176	0.0	0.0	0.0	0.0	0.0	14.3	945.2	809.6	195.9	1150.9	857.0	661.6
	Total Surface Water Treated	0.0	0.0	0.0	0.0	89.1	822.7	1829.9	1856.5	1557.3	1424.2	978.2	775.7
2013	Diversion under permit 21176	772.0	788.8	196.3	7.2	37.6	33.0	19.8	747.8	1285.2	1515.7	1270.2	934.3
	Total Surface Water Treated	781.8	798.5	1038.8	844.0	1689.0	1864.5	1952.3	1718.4	1365.3	1523.8	1291.3	955.2
2014	Diversion under permit 21176	573.6	298.3	15.7	0.0	0.0	0.0	797.4	590.1	263.3	574.2	863.3	763.0
	Total Surface Water Treated	575.5	344.2	290.0	315.1	413.8	779.3	1321.5	1415.2	1561.4	1296.4	869.8	762.7
2015	Diversion under permit 21176	29.9	529.4	201.2	44.0	376.4	1084.7	1388.1	1629.9	1683.6	1301.4	563.1	Data Pending
	Total Surface Water Treated	30.1	558.2	960.6	971.2	1663.6	2076.1	2086.4	1691.1	1652.2	1315.1	520.2	Data Pending

Also, Stockton East Water District (SEWD) delivers water to the “Urban Water Contractors,” of which the City is one, through its water treatment plant pursuant to the Second Amended Contract between SEWD, City, California Water Service Company, Lincoln and Colonial Village Heights, dated September 15, 1987. The projected amount of surface water delivered to the City is estimated at 6,400 acre-feet between April 1, 2015 to March 31, 2016. There are also groundwater supplies delivered in the City by the City and by California Water Service Company.

**ATTACHMENT 6 (Proof of Service)**

**PROOF OF SERVICE**

I am employed in the County of Sacramento; my business address is 500 Capitol Mall, Suite 1000, Sacramento, California; I am over the age of 18 years and not a party to the foregoing action.

On January 5, 2016, I served a true and correct copy of the PROTEST – PETITION of Protestant City of Stockton (re Change Petition for California WaterFix Project):

XXX (electronically) by electronically transmitting a true copy to the person(s) at the electronic mailing addresses as set forth below.

California Department of Water Resources  
c/o James Mizell  
1416 Ninth Street, Room 1104  
Sacramento, CA 95818  
James.Mizell@water.ca.gov

U.S. Bureau of Reclamation  
c/o Amy Aufdemberge  
U.S. Department of Interior  
Office of Regional Solicitor, Pacific Southwest Region  
2800 Cottage Way Sacramento, CA 95825-1898  
Amy.Aufdemberge@sol.doi.gov

I declare under penalty of perjury that the foregoing is true and correct. Executed on January 5, 2016, at Sacramento, California.

  
\_\_\_\_\_  
Crystal Rivera